9. Principal and Surety (§ 123 (2)*)—Instruction Directing Finding for Surety if Plaintiff Refused to Make Affidavit to Itemized Claim Properly Refused.—In an action against the surety on the bond of the treasurer of plaintiff country club, defendant surety company's instruction, directing finding for defendant if plaintiff club refused to make the affidavit required to its itemized claim, was properly refused; the condition of the bond not requiring that plaintiff furnish the form of affidavit which defendant surety company furnished to it.

10. Principal and Surety (§ 162 (3)*)—Instruction on Liability of Surety for Acts of Employee of Plaintiff's Treasurer Not Erroneous.—In an action by a country club against the surety on its treasurer's bond, instruction that for plaintiff club to recover, it must show it had sustained loss of money, securities, etc., by an act of fraud or dishonesty committed by the treasurer in the performance of his duties, or committed by any agent of the treasurer's during the continuance of the bond for whose act he was responsible, was not erroneous, though not as clearly expressed as it should have been.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 716.]

11. Principal and Surety (§ 79*)—If Entries Made by Treasurer's Employees Showed Shortage without Their Misconduct, the Shortage Was the Treasurer's.—If entries on a country club's books, made by the employees of its treasurer, showed a shortage in the accounts of the treasurer, and there was nothing to show fraud or misconduct in connection therewith on the part of the employees, the shortage was the treasurer's, and there was a liability on his bond therefor.

Sims J., dissenting.

Error to Law and Equity Court of City of Richmond.

Action by the Country Club of Virginia, Incorporated, against the United States Fidelity & Guaranty Company. To review judgment for plaintiff, defendant brings error. Affirmed.

David Meade White, of Richmond, for plaintiff in error.

Pollard & Smith, of Richmond, for defendant in error.

DIRECTOR GENERAL OF RAILROADS *v.* CHANDLER.

March 17, 1921.

[106 S. E. 226.]

1. Evidence (§ 407 (2)*)—Bill of Lading Prima Facie Evidence that Carrier Received Goods, but May Be Rebutted.—Bill of lading constitutes prima facie evidence of fact that carrier received goods recited therein, but this evidence may be rebutted.

[Ed. Note.—For other cases, see 2 Va.-W. Va. Enc. Dig. 677.]

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*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

2. Carriers (§ 52 (1)*)—No Recovery from Carrier under Bill of Lading Where Goods Were Never Delivered to Carrier.—Where plaintiff purchased potatoes and directed seller to bill them in his name from point of shipment to him at destination and on delivery of bill of lading paid for the potatoes, he could not recover from the carrier for loss of the potatoes, where no potatoes were ever delivered to the carrier under the bill of lading, the carrier's agent, due to the fact that seller, who operated on a large scale, presented to him for signature a number of bills of lading purporting to cover an equal number of carload shipments, all of which were signed at the same time, agent failing to detect the error in checking the bills; the recitals of the bill of lading in no way estopping the carrier from showing the true facts.

[Ed. Note.—For other cases, see 2 Va.-W. Va. Enc. Dig. 681.]

Error to Circuit Court, Northampton County.

Notice of motion for judgment brought by J. W. Chandler against the Director General of Railroads operating the New York, Philadelphia & Norfolk Railroad. Verdict and judgment for plaintiff, and defendant brings error. Reversed.

Mears & Mears, of Eastville, and *Geo. R. Allen,* of Philadelphia, Pa., for plaintiff in error.

J. Brooks Mapp, of Keller, for defendant in error.

LEVY, Director of Public Welfare, *v.* KOSMO.

SAME *v.* MANGIGIAN et al.

March 17, 1921.

[106 S. E. 228.]

1. Appeal and Error (§ 781 (7)*)—Execution of Leases Sought by Mandamus Held to Have Rendered Controversy Moot.—Appeals from orders, granting petitions in mandamus to require respondent to assess rentals on market property under the ordinance and to give petitioners their preference right to lease such premises, involve only moot questions, where it appears that respondent had conformed to the orders by executing the leases sought by petitioners.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 430.]

2. Appeal and Error (§ 843 (2)*)—Court Will Not Construe Lease Where Lessees Are Not Parties.—On appeal in mandamus proceeding to compel a city official to lease market property to petitioners, which had become moot by the execution of the leases sought for, the court will not construe other leases of the same property exe-

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.